



CREATING  
LAW  
ENFORCEMENT  
ACCOUNTABILITY &  
RESPONSIBILITY

Main Street Legal Services, Inc.  
CUNY School of Law  
2 Court Square  
Long Island City, NY 11101-4356  
www.cunyclear.org

December 23, 2016

**VIA ECF**

Honorable Allyne R. Ross  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: *Janfeshan v. USCBP et al.*, 16-CV-6915 (ARR) (RM) (E.D.N.Y.)**

Dear Judge Ross:

Defendants' motion is unnecessary. Counsel for Defendants emailed the undersigned after 8PM on the night of December 22, 2016. The following morning and early afternoon were taken up by previously scheduled meetings and a medical appointment. Plaintiff's counsel was about to reply via email to Defendants' counsel this afternoon when the instant motion was filed. A collegial and collaborative approach might have spared the Court both time and effort but Plaintiff is now forced to respond in like manner.

Plaintiff will file his motion as soon as possible and, in any event, by no later than December 30, 2016. In light of Defendants' readiness to respond to the motion in a week under their proposal, Plaintiff respectfully requests that the Court set Defendants' response seven days after the motion's filing, with Plaintiff's reply due seven days after the filing of Defendants' response. Plaintiff's counsel is available for a hearing between January 10 and 20, 2017 (with the exception of the afternoon of January 18, when settlement negotiations in another matter are currently scheduled).

Contrary to Defendants' assertion, Magistrate Judge Bloom did not order Plaintiff to provide Defendants with additional information. At the December 9 conference in *Janfeshan v. Kerry*, 16-CV-4324 (Ross, J.) (Bloom, M.J.) (E.D.N.Y.) ("*Janfeshan I*"), Magistrate Judge Bloom provided the parties with her initial thoughts on how the next phase might proceed and stated her preference that *both* parties think about an acceptable protocol. *See, e.g., Janfeshan I*, Status Conf. Tr. 20, Dec. 9, 2016 ("Again, I want people to be thinking about ways to solve the next issue."). She also suggested that counsel for the parties confer. Status Conf. Tr. 22, Dec. 9, 2016 ("I think you should speak to Mr. Dunn . . . if he is going to be the one handling it for the agency.").<sup>1</sup> Needless to say, Plaintiff remains ready to confer with Defendants as this litigation proceeds.

<sup>1</sup> Magistrate Judge Bloom appropriately noted that the basis for the action involving the search of the phone was still uncertain at that early stage. *Janfeshan I*, Status Conf. Tr. 21, Dec. 9, 2016 ("Well I'm telling you to think about that now, because, again, I don't want the next case, which I really don't know what the basis is for the next case.").

The Court did unequivocally and repeatedly order Defendants, however, to refrain from searching Plaintiff's smartphone until Plaintiff's forthcoming motion in this action is resolved by the Court. *See, e.g., Janfeshan I*, Minute Order Entry (Ross, J.), ECF No. 12 (Dec. 6, 2016) ("Defendants agreed not to commence a search of plaintiff's cellular phone until the court resolves plaintiff's motion."); Status Conf. Tr. 18, Dec. 9, 2016 ("[T]he government has said that they will not review anything on Mr. Janfeshan's phone until this is reviewed, and that will remain in effect as a consent order, even if this case was closed out, the 16-4324."). There is no reason for the Court to accede to Defendants' request that it reverse itself on this point. Defendants should continue to adhere to that clear directive until the forthcoming motion has been adjudicated.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Naz Ahmad  
Tarek Z. Ismail  
Ramzi Kassem  
**CLEAR project**  
**Main Street Legal Services, Inc.**  
CUNY School of Law  
2 Court Square  
Long Island City, NY 11101  
T: (718) 340-4630  
F: (718) 340-4478  
E: naz.ahmad@law.cuny.edu

Cc: Elliot Schachner, Esq.  
Assistant United States Attorney  
Eastern District of New York  
*Counsel for Defendants*  
VIA ECF

---

The claims in the pending Complaint, *Janfeshan v. USCBP*, 16-CV-6915 (Ross, J.) (Mann, C.M.J.) (E.D.N.Y.) ("*Janfeshan II*"), ECF No. 1, and in Plaintiff's forthcoming motion, include but are not limited to those asserted in Plaintiff's earlier motion seeking to enjoin Defendants from searching his smartphone. *Janfeshan I*, Pl.'s Mot. for TRO, ECF No. 10 (Dec. 5, 2016).